

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLY S. DUKULY,

Plaintiff,

v.

UNKNOWN NUTTALL, et al.,

Defendants.

Case No. 1:21-cv-519

HON. JANET T. NEFF

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Defendant Nuttall filed a motion for summary judgment (ECF No. 58). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending that the Court grant Defendant's motion as to the federal claim and dismiss the state law claims pursuant to 28 U.S.C. § 1367. The matter is presently before the Court on Plaintiff's objections to the R&R (ECF No. 78). Defendant filed a response to the objections (ECF No. 80). In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the R&R to which objections have been made. The Court denies the objections and issues this Opinion and Order.

Plaintiff asserts five objections to the R&R. However, "objections must be clear enough to enable the district court to discern those issues that are dispositive and contentious." *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir. 1995) (citing *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505, 508–09 (6th Cir. 1991)). A general objection that fails to specify the issues in contention

equates to no objection. *Id.* Moreover, objections are not a vehicle to rehash old arguments without explaining why the Magistrate Judge erred in rejecting the arguments. *Jarbou v. JPMorgan Chase Bank N.A.*, 611 F. App'x 342, 343-44 (6th Cir. 2015); *Owens v. Comm'r of Soc. Sec.*, No. 12-47, 2013 WL 1304470, *3 (W.D. Mich. March 28, 2013). “Issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived. It is not sufficient for a party to mention a possible argument in the most skeletal way, leaving the court to . . . put flesh on its bones.” *McPherson v. Kelsey*, 125 F.3d 989, 995-96 (6th Cir. 1997) (citations omitted). Here, several of Plaintiff’s objections are not specific and fail to identify any disputed issue in the Magistrate Judge’s analysis. The Court, therefore, will address only the specific objection.

Plaintiff’s primary objection is that the Magistrate Judge erred in determining that Plaintiff’s evidence—specifically Prisoner Eldridge’s affidavit—was inadmissible hearsay.¹ The Court discerns no error in the Magistrate Judge’s analysis. As Defendant points out, the affidavit is double hearsay—Prisoner Eldridge’s statements about what Prisoner Maniaci told him about what Defendant told Prisoner Maniaci. And even if the Court were to admit this evidence for a reason other than for the truth of the matter asserted, Plaintiff still would have not provided any evidence of what Defendant told Prisoner Maniaci. Therefore, Plaintiff’s objection regarding Prisoner Eldridge’s affidavit is denied.

In sum, Plaintiff’s arguments fail to demonstrate any factual or legal error in the Magistrate Judge’s analysis or conclusion. Accordingly, this Court adopts the Magistrate Judge’s Report and Recommendation as the Opinion of this Court. A Judgment will be entered consistent with this Opinion and Order. *See* FED. R. CIV. P. 58. Because this action was filed *in forma pauperis*, this

¹ Plaintiff addresses this issue in his first and fifth objection.

Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good faith. *See McGore v. Wigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007).

Therefore:

IT IS HEREBY ORDERED that the Objections (ECF No. 78) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 76) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the Motion for Summary Judgment (ECF No. 58) is GRANTED IN PART and DENIED IN PART for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that Plaintiff's state law claims are DISMISSED WITHOUT PREJUDICE pursuant to 28 U.S.C. § 1367.

IT IS FURTHER ORDERED that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith.

Dated: March 8, 2024

/s/ Janet T. Neff
JANET T. NEFF
United States District Judge